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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,308	03/18/2004	Patricia J. Horst	502611-CIP	5768
53609 7590 05/06/2008 REINHART BOERNER VAN DEUREN P.C. 2215 PERRYGREEN WAY ROCKFORD, IL 61107				
EXAMINER				
MENEZES, MARCUS				
ART UNIT		PAPER NUMBER		
3677				
NOTIFICATION DATE		DELIVERY MODE		
05/06/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

RockMail@reinhartlaw.com

### Office Action Summary

**Application No.**

10/803,308

**Applicant(s)**

HORST ET AL.

**Examiner**

MARCUS MENEZES

**Art Unit**

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-16, 18 and 21-40 is/are pending in the application.
- 4a) Of the above claim(s) 2, 4, 7, 8, 10, 12, 15, 16, 18, 21-29 and 36-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3, 5, 6, 9, 11, 13, 14 and 30-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

- Examiner acknowledges the Applicant's record of the Examiner interview held on February 28, 2008, in the remarks filed on February 29, 2008. Further, Examiner acknowledges that said record is accurate to the discussion during the Examiner interview on February 28, 2008.

### ***Claim Objections***

Claims 33 and 34 are objected to because of the following informalities: they are in the reverse order, since claim 33 is based off of claim 34. Appropriate correction is required.

Claims 37 and 38 are objected to because of the following informalities: each claim has an incorrect status identifier. Both claims are based off of claim 36 which has been withdrawn; thus claims 37 and 38 are also considered withdrawn by Examiner. Appropriate correction is required. See MPEP §714.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 9, 11, 30-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meader (US 1,839,798) in view of Elliott (US 1,782,293)

Regarding 3, 11, 30, 31 and 35, Meader discloses an apparatus comprising a substantially flat and planar central base member body (2) adapted to be placed between a movable floor covering and an underlying floor covering; the central base member body having an upper surface (5) thereof adapted for engaging the movable floor covering, and a lower surface (1) thereof having a lone downwardly extending spike that is adapted to pass completely through the layer of pile and threadably engage the backing of the underlying floor covering for securing the apparatus to the underlying floor covering as the central base member of the apparatus is rotated to screw the threaded spike through the backing. Further, the central base member body has a height (defined by the width of element 2 when viewed from the side as in Fig. 6) which is less than the body's lateral extension, wherein said lateral extension

However Meader fails to disclose that said spike is threaded on an outer surface and helical.

Elliott teaches of a similar device with a helical threaded spike on its outer surface.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have included the teaching of a threaded spike in Meader in view of Elliot in order to facilitate with the engagement of the apparatus with the floor covering. Regarding claim 11, Applicant should note that the backing of the underlying substrate has not been positively recited.

Regarding claim 9, the single downwardly extending spike is adapted for penetrating completely through the backing of the underlying substrate.

Regarding claim 32, since no guidance was received from the Office action dated November 30, 2007 regarding the recitation of the backing of the carpet, Examiner notes that said backing of the carpet is not positively recited and that said apparatus is capable of performing said recitation. Also note that the terms "configured for" is not a positive recitation but only requires the ability to so perform.

Regarding claims 34 and 33, Meader discloses that the central base member includes one or more torque receiving elements (6), wherein said torque receiving elements comprise of one ore more grasping elements (6) for grasping and applying torque to the apparatus.

Claims 5, 6, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meader (US 1,839,798) in view of Elliott (US 1,782,293) and in further view of Cundall (GB 2,113,993).

Meader in view of Elliot discloses the invention, as applied to claim 3 above, but fails to disclose that said upper surface of the central base member includes an adhesive for bonding, wherein said adhesive is covered by a removable protective member that is peeled off to expose the adhesive.

Cundall discloses a similar invention, where its upper surface (5) of the central base member includes an adhesive for bonding, wherein said adhesive is covered by a removable protective member (8) that is peeled off to expose the adhesive. (See fig. 4, lines 55-60).

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Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have included the teaching of the adhesive on the upper surface of the central base member in Meader and Elliot in view of Cundall in order to provide a means for said apparatus to affix to a rug above said apparatus.

### ***Response to Arguments***

Applicant's arguments with respect to all claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARCUS MENEZES whose telephone number is (571)272-6284. The examiner can normally be reached on M-F 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vic Batson can be reached on 571-272-6987. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert J. Sandy/  
Primary Examiner, Art Unit 3677

/MM/